



PUBLIC NOTICE

Federal Communications Commission
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DA 05-383

Released: February 11, 2005

AMERICASKY CORPORATION AND AMERICATEL CORPORATION SEEK FCC CONSENT TO TRANSFER CONTROL OF LICENSES AND AUTHORIZATIONS AND A DECLARATORY RULING ON FOREIGN OWNERSHIP

PLEADING CYCLE ESTABLISHED

WC Docket No. 05-40

Petitions Due: March 14, 2005

Oppositions Due: March 24, 2005

Replies Due: March 29, 2005

AmericaSky Corporation ("AmericaSky") and Americatel Corporation ("Americatel" and collectively with AmericaSky, the "Applicants") have filed applications seeking Commission approval to transfer control of earth station licenses and domestic and international section 214 authorizations from Telecom Italia International N.V. ("TII") to Almendral, S.A. ("Almendral").¹ AmericaSky also requests a declaratory ruling that the proposed indirect foreign investment by Almendral would be consistent with the public interest.²

AmericaSky, a Florida corporation, maintains and operates two earth station facilities licensed by the Commission for domestic and international satellite service.³ AmericaSky uses its earth stations to provide station capacity for international traffic of other Commission-authorized carriers pursuant to its section 214 authorization. Americatel is a Delaware

¹ Americatel Corporation, Application for Section 214 Authority to Transfer Control of Domestic and International Authorizations, File No. ITC-T/C-20050128-00035 (filed Jan. 27, 2005) ("Americatel Application"); AmericaSky Corporation, Application for Authority to Transfer of Control of International Section 214 Authorization, ITC-T/C-20050128-00036 (filed Jan. 25, 2005) ("AmericaSky Int'l 214 Application"); AmericaSky Corporation, Application for the Transfer of Control of Earth Station Licenses, SES-T/C-20050128-00114 (filed Jan. 27, 2005) ("AmericaSky Earth Station Application").

² AmericaSky Corporation, Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act of 1934, as amended, ISP-PDR-20050126-00003 (filed Jan. 26, 2005) ("Petition for Declaratory Ruling").

³ AmericaSky Earth Station Application, at n.2 (File Nos. SES-MOD-19950804-00604 (KA407) and SES-MOD-19950804-00603 (KA412)). According to the application, AmericaSky, under separate cover, is relinquishing its authority under earth station license File No. SES-LIC-19940829-00744 (E940470).

corporation and reseller of interstate domestic long distance services, including casual dial around service, pre-subscribed 1+ calling, and prepaid calling card services. Americatel provides domestic interexchange service pursuant to blanket section 214 authority, and provides domestic intrastate service pursuant to its various state authorizations.⁴

AmericaSky is 80 percent owned by ENTEL USA Holdings, Inc. ("ENTEL USA"), a U.S. corporation, and 20 percent owned by ENTEL International B.V.I. Corporation ("ENTEL BVI"), a company organized under the laws of the British Virgin Islands.⁵ Americatel is majority-owned (80%) by ENTEL BVI. ENTEL BVI and ENTEL USA are direct and indirect, wholly-owned subsidiaries, respectively, of Empresa Nacional de Telecomunicaciones, S.A. ("ENTEL-Chile"), a publicly-traded Chilean corporation that provides domestic and international long distance services in Chile.⁶

Currently, TII, a Netherlands corporation, holds a 54.76% voting interest in the stock of ENTEL-Chile. TII is a wholly-owned subsidiary of Telecom Italia S.p.A. ("Telecom Italia"), a joint stock company incorporated under the laws of Italy, which, along with its subsidiaries, provides fixed and mobile telecommunications services, data services, satellite telecommunications services, and information technology software and services throughout Europe and Latin America. Through a stock purchase agreement, Almendral, a publicly-held Chilean corporation,⁷ will acquire a 54.76% voting interest in ENTEL-Chile from TII.⁸ Therefore, Almendral will acquire an indirect controlling interest in AmericaSky and Americatel after consummation of the proposed transaction.⁹ Applicants assert that, upon the divestiture of TII's interest in ENTEL-Chile, AmericaSky and Americatel will no longer be affiliated with a foreign carrier that possesses market power on the foreign end of a U.S. international route and

⁴ See generally Americatel Application.

⁵ See e.g., Petition for Declaratory Ruling at 3 & Exhibit A (Illustrative Chart of Transfer of Control).

⁶ See Americatel Application, at 2-4.

⁷ According to the Applicants, Almendral is not a telecommunications provider. Additionally, Almendral and its direct and indirect owners do not provide any domestic telecommunications services and do not have an ownership interest in any company that provides domestic telecommunications services in the U.S. *Id.* at 4.

⁸ The Applicants state that under the terms of the Stock Purchase Agreement, it is possible that all or part of the ENTEL-Chile shares to be acquired by Almendral will be held by a yet-to-be-formed Chilean wholly-owned subsidiary of Almendral (the "Subsidiary"). According to the Applicants, the insertion of a wholly-owned subsidiary as the holder of all or part of the stock of ENTEL-Chile will not affect the ultimate control of AmericaSky and Americatel as described in the application. To the extent any ownership interests of ENTEL-Chile will be ultimately held by such a Subsidiary, the Applicants will promptly notify the Commission prior to the closing. Americatel Application at 4 n.3; AmericaSky Int'l 214 Application at 4 n.3.

⁹ Pursuant to a shareholders agreement dated January 24, 2005, the following six shareholder groups (all owned and controlled by Chilean citizens) control approximately 75% of Almendral: the Fernandez Leon Group (15.036%); the Hurtado Vicuña Group (11.227%); the Matte Group (21.032%); the Izquierdo Group (12.749%); the Gianolli Group (6.309%); and the Consorcio Group (8.208%). The remaining ownership interests are distributed among numerous minority shareholders, none of whom has a greater than 10% ownership interest in Almendral. Americatel Application at 12-13.

therefore request that the Commission classify them as non-dominant carriers on all U.S. international routes pursuant to section 63.10 of the rules.¹⁰

AmericaSky also requests a declaratory ruling that it is in the public interest to permit Almendral to hold an indirect, controlling ownership interest in AmericaSky, a satellite earth station licensee, through ENTEL-Chile and its subsidiaries, ENTEL BVI and ENTEL USA.¹¹ AmericaSky asserts that Almendral, ENTEL USA, ENTEL BVI, and ENTEL-Chile have their principal places of business in the United States or a member of the World Trade Organization.¹² Therefore, pursuant to the rules and policies established by the Commission's *Foreign Participation Order*,¹³ AmericaSky asserts that indirect foreign ownership by Almendral in excess of the 25 percent benchmark in Section 310(b)(4) of the Act is consistent with the public interest.

The Applicants contend that approval of the proposed transaction will serve the public interest.¹⁴ Applicants state that as a result of the proposed transaction, AmericaSky and Americatel will be backed by Almendral, an entity with the financial means that will enable AmericaSky and Americatel to continue to bring competitive integrated telecommunications services to customers in the United States. Applicants further state that the proposed transfer of control of AmericaSky and Americatel will be seamless and will not have a direct impact on their day-to-day management or operations. Moreover, the Applicants assure the proposed Transaction will be consummated in a seamless fashion and will not, in any way, inconvenience or cause harm to any customers of AmericaSky or Americatel.

The applications associated with this proposed transfer of control have been assigned the following file numbers:

(1) the Petition for Declaratory Ruling under Section 310(b)(4): File Number ISP-PDR-20050126-00003.

¹⁰ Americatel Application at 8-10; AmericaSky Int'l 214 Application at 7-9. Applicants state that, although Americatel and AmericaSky are presently affiliated with foreign carriers that the Commission presumes to possess market power on the foreign ends of their respective routes (Italy, Argentina, Bolivia, and Cuba), the affiliations result from TII's ownership interest in ENTEL-Chile and will cease to exist once the proposed transaction is consummated. Applicants also provide information for the record to demonstrate that the foreign carriers with which Americatel and AmericaSky will be affiliated after closing lack market power in their respective foreign markets. Americatel Application at 9-10, 14-15; AmericaSky Int'l 214 Application at 8-9, 13-14.

¹¹ Petition for Declaratory Ruling at 1.

¹² *Id.* at 3-5; Letter from Jean L. Kiddoo and Ulises R. Pin, Counsel to AmericaSky Corporation, Swidler Berlin, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Feb. 1, 2005); Letter from Jean L. Kiddoo and Ulises R. Pin, Counsel to AmericaSky Corporation, Swidler Berlin, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Feb. 2, 2005).

¹³ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997).

¹⁴ AmericaSky Int'l 214 Application at 5; Americatel Application at 5.

(2) the earth station application:

<u>File Number</u>	<u>Transferor</u>	<u>Transferee</u>	<u>Licensee</u>	<u>Call Sign</u>
SES-T/C-20050128-00114	Telecom Italia International, N.V.	Almendral, S.A.	AmericaSky Corporation	KA407 E940470

(3) the international section 214 authorizations:

<u>File Number</u>	<u>Transferor</u>	<u>Transferee</u>	<u>Licensee</u>	<u>Authorization Number</u>
ITC-T/C-20050128-00035	Telecom Italia International, N.V.	Almendral, S.A.	Americatel Corporation	ITC-214-19970312-00146 ITC-214-19970421-00220 ITC-96-263, ITC-94-514 ITC-94-321, ITC-93-160-TC, ITC-92-166, and ITC-92-165
ITC-T/C-20050128-00036	Telecom Italia International, N.V.	Almendral, S.A.	AmericaSky Corporation	ITC-214-19941020-00007

(4) Applicants also filed an application for consent to transfer control of domestic section 214 authority for Americatel from TII to Amendral.

Applicants request streamlined treatment for the transfer of control of the domestic and international section 214 authorizations pursuant to sections 63.03(b)(1)(ii) and 63.12(c)(1)(i) and (ii) of the Commission's rules.¹⁵ We find, however, that streamlined treatment is inappropriate in this case because the Applicants have filed related applications under Title III as well as a petition for declaratory ruling under section 310(b)(4) of the Act, which are unlikely to be resolved within the time periods for streamlined domestic and international section 214 applications.

GENERAL INFORMATION

The applications filed by the Applicants have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Final action will not be taken earlier than thirty-one days following the date of this Public Notice.¹⁶

¹⁵ 47 C.F.R. § 63.03(b)(1)(ii), 63.12(c)(1)(i)-(ii).

¹⁶ See 47 U.S.C. § 309(b).

Interested parties may file petitions to deny no later than March 14, 2005. Oppositions to such pleadings must be filed no later than March 24, 2005. Replies to such pleadings must be filed no later than March 29, 2005. All filings concerning matters referenced in this Public Notice should refer to **WC Docket No. 05-40**.

Under the Commission's current procedures for the submission of filings and other document,¹⁷ comments may be filed using the Commission's Electronic Comment Filing System (ECFS)¹⁸ or by hand delivery to the Commission's Massachusetts Avenue location.

Comments filed through the ECFS can be sent as an electronic file via the Internet to [<http://www.fcc.gov/e-file/ecfs.html>](http://www.fcc.gov/e-file/ecfs.html). Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

¹⁷ See *Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, 16 FCC Rcd 21483 (2001); see also *FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence*, Public Notice, 16 FCC Rcd 22165 (2001); *Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, Public Notice, 18 FCC Rcd 16705 (2003).

¹⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11322 (1998).

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: www.bcpweb.com; phone: 202-488-5300 fax: 202-488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C317, Washington, D.C. 20554; e-mail: alexis.johns@fcc.gov;
- (4) Terri Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: terri.natoli@fcc.gov;
- (5) JoAnn Lucanik, Satellite Division, International Bureau, 445 12th Street, S.W., Room 6-A660, Washington, D.C. 20554, email: joann.lucanik@fcc.gov;
- (6) David Krech, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-A644, Washington, DC 20554; email: david.krech@fcc.gov;
- (7) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (8) Francis Gutierrez, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-A623, Washington, D.C. 20554 email: francis.gutierrez@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone: 202-488-5300, fax: 202-488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1394, Alex Johns, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1167, JoAnn Lucanik, Satellite Division, International Bureau, at (202) 418-0719, or David Krech, Policy Division, International Bureau, at (202) 418-1460.

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